

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

KRISTIE LYNN MONTGOMERY,
Plaintiff,

V.

PHILLIP OSCAR KING, MICHAEL
LOONEY TRUCKING, LLC, CARY A.
SEBASTIAN AND CRUM TRUCKING,
INC.,
Defendants

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Civil Action No. 6:20-cv-00991

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Phillip Oscar King and Michael Looney Trucking, LLC, Defendants in the above-entitled and numbered cause, and files their Notice of Removal and would respectfully show the Court as follows:

BACKGROUND

1. This lawsuit arises from a motor vehicle accident that occurred on May 11, 2019 in Belton, Bell County, Texas.

PROCEDURAL HISTORY

2. Plaintiff filed suit in Cause No. 319,561-C, in the 169th Judicial District Court of Bell County, Texas on August 27, 2020. Defendant Phillip Oscar King was served with process on September 23, 2020 and Defendant Michael Looney Trucking, LLC was served with process on September 29, 2020 and were provided a copy of Plaintiff's Original Petition and Request for Disclosure at such times. Defendants Phillip Oscar King and Michael Looney Trucking, LLC filed their Original Answer in the 169th Judicial District Court of Bell County on October 14, 2020.

3. Defendants have filed this Notice of Removal within the time period required by 28 U.S.C. § 1446(b).

NATURE OF THE SUIT

4. Plaintiff alleges that on or about May 11, 2019, she sustained damages as a result of a motor vehicle accident that occurred in Bell County, Texas.

5. According to Plaintiff's Original Petition and Request for Disclosure filed in state court, complete diversity of citizenship exists at the time Plaintiff filed her lawsuit. As set out in her Original Petition, Plaintiff is a citizen of the State of Texas who resides in McLennan County, Texas. *See Plaintiff's Original Petition and Request for Disclosure*, attached hereto as **Exhibit A**, page 2.

6. As set out in Plaintiff's Original Petition and Request for Disclosure, page 2, Defendants Phillip Oscar King and Michael Looney Trucking, LLC are not domiciled in the State of Texas. Indeed, Plaintiff's Original Petition shows that Defendant Phillip Oscar King is a nonresident motorist who resides in Arkansas. Moreover, as Plaintiff has pled in her Original Petition and Request for Disclosure, Defendant Michael Looney Trucking, LLC is a foreign limited liability company with its corporate headquarters located in Arkansas. *See Exhibit A*, page 2.

7. As set out in Plaintiff's Original Petition and Request for Disclosure, page 2, Defendants Cary A. Sebastian and Crum Trucking, Inc. are not domiciled in the State of Texas. Indeed, Plaintiff's Original Petition shows that Defendant Cary A. Sebastian is a nonresident motorist residing in Indiana. Moreover, as Plaintiff has pled in her Original Petition and Request for Disclosure, Defendant Crum Trucking, Inc. is a foreign limited liability company with its corporate headquarters in Indiana. *See Exhibit A*, page 2.

BASIS FOR REMOVAL

7. Removal is proper because there is complete diversity of citizenship between Plaintiff and Defendants as pled on the face of Plaintiff's Original Petition and Request for Disclosure.

8. As conveyed in Plaintiff's Original Petition and Request for Disclosure, the amount in controversy exceeds \$200,000.00. *See Exhibit A* page 8.

9. The consent to removal by Defendants Phillip Oscar King and Michael Looney Trucking, LLC is shown by the filing of this request by Defendants King and Michael Looney Trucking. Additionally, Defendants Cary A. Sebastian and Crum Trucking, Inc. consent to removal of this lawsuit. After discussing removal with counsel for Defendants Cary A. Sebastian and Crum Trucking, Inc., express permission was given to sign his name to the attached, **Exhibit B**, Notice of Consent to Removal by Defendants Cary A. Sebastian and Crum Trucking, Inc. that is incorporated herein by reference. Therefore, all of the named Defendants consent to the removal of this action.

VENUE AND JURISDICTION

10. This lawsuit is being removed to the United States District Court, Western District of Texas, Waco Division pursuant to 28 U.S.C. § 1441(a) because this district and division represent the location in which the removed action has been pending.

11. This Court has jurisdiction of this action by virtue of the provisions of 28 U.S.C. § 1332 in that this is a case of complete diversity of citizenship between the parties with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs. *See generally Garcia v. Koch Oil of Texas, Inc.*, 351 F.3d 636, 638 (5th Cir. 2003).

**DEFENDANTS' NOTICE OF REMOVAL
IS PROCEDURALLY CORRECT**

12. Defendants Phillip Oscar King and Michael Looney Trucking, LLC attach to this notice all process, pleadings and orders filed in the state court action as required by 28 U.S.C. §1446(a). (See **Exhibit C**, Index of Matters Being Filed)

JURY DEMAND

13. Defendants Phillip Oscar King and Michael Looney Trucking, LLC made a demand for a jury trial in State District Court and tendered the jury fee.

NOTICE TO STATE COURT

14. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the State Court in which this action is pending.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
PHILLIP OSCAR KING and MICHAEL
LOONEY TRUCKING, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing, to the following:

Michael "Shane" McGuire THE McGUIRE FIRM, P.C. 102 N. College Street, Suite 301 Tyler, Texas 75702 903.287.2878 903.630.7173 shane@mcguirefirm.com	Attorney for Plaintiff KRISTIE LYNN MONTGOMERY
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and a true and correct copy of the foregoing document has been served upon the above participants, via email at the email addresses set forth above, in accordance with the Federal Rules of Civil Procedure.

/s/ Lynn S. Castagna
Lynn S. Castagna